IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6633 OF 2004

J.G. Augad .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr.K.K.Singhavi i/b Mr.M.C.Dalal & Co. for the petitioner

Mr.P.S.Khemani, A.G.P. for the respondent no.1 to 3

Mr.M.D.Lonkar for the respondent no.4

Mr.Sachin Shetye for the respondent no.5

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 26TH AUGUST, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. In the present petition, the petitioner has challenged the order dated 3rd August, 2004 passed by the Maharashtra Administrative Tribunal, Bombay. By the said order, the learned member of the Tribunal has disposed of the final appeal on the

short ground that the interim order passed by the Tribunal dated 27th July, 2004 has been confirmed by this court in Writ Petition No.6023 of 2004 and therefore nothing survives in the main appeal and the same is accordingly disposed of. Some of the facts in the present case briefly stated are as under:

2. The petitioner joined the services of the State Excise Department of the Government of Maharashtra on 1st September, 1975 and according to the petitioner his service record was unblemished right upto 1990. On 2nd September, 1991, it is the case of the petitioner, that there was a raid at his residence by the Anti Corruption Bureau. Sometime in or about August 1997, the petitioner was transferred to Dahanu, District Thane and on 4th January 2003, the petitioner was transferred to Maharashtra State Flying Squad as Inspector. On 19th September 2003, the petitioner was asked to proceed on leave immediately.

3. It seems that sometime in or about 31st May

2004, a transfer order was issued by the Divisional Deputy Commissioner, Konkan Division, Thane by which he has been transferred from the post of Inspector, Flying Squad No.1, Mumbai Suburban to Inspector, Flying Squad, Maharashtra State, Mumbai. In respect of the said order the petitioner did not release the charge and did not assumed the charge at transferred post. Consequently, the respondent no.4 could not take charge to his transferred post which was held by the petitioner before his transfer.

4. It was the case of the respondent no.4 that the petitioner has managed to stay his transfer order and the State Government is deliberately not implementing the same.

5. Accordingly, the 4th respondent filed an application before the CAT being O.A. No.677 of 2004. The said application was heard by the Maharashtra Administrative Tribunal, Mumbai. As and by way of interim order, the Tribunal directed the respondent no.1 to 3 to give effect to the

order dated 31st May 2004, in any circumstances, within one week and adjourn the matter. The petitioner herein challenged the said order passed by the Maharashtra Administrative Tribunal by filing writ petition in this Court being writ petition no.6023 of 2004. By our order dated 27th July 2003, we declined to interfere with the said order and stated as under:

> "2. By an interim order Tribunal has directed the State Govt. to effect transfers as per the order issued by the competent authority. We do not find any reason to interfere with this order."

6. Thereafter the said appeal came up for final hearing before the Tribunal on 3rd August 2004. The Tribunal has by the impugned order disposed of the application on the ground that the interim order passed by the Tribunal was challenged in this court by filing a writ petition and the same was dismissed. Furthermore, the interim order has been complied with by the authorities by passing the order dated 22nd July 2004 and therefore nothing

survives in the original petition and the same is disposed of. It is this order of the Tribunal which is the subject matter of the present petition.

7. The learned counsel for the petitioner has interalia contended that the Tribunal was in error while disposing of the application in terms of the interim order without giving any opportunity of hearing to the petitioner to conduct the matter for final hearing. It has been further contended by Mr.Singhavi, the learned counsel for the petitioner that the order of this court dismissing earlier writ petition was on the ground that this court declined to interfere in an interlocutory order by exercising jurisdiction under article 226 of the Constitution of India and the same does not mean that the petitioner should not be heard at all in the said appeal. It is the case of the petitioner that the petitioner is entitled to argue the matter before the final orders are passed in the said O.A. No.677 of 2004 by the said tribunal.

8. On the other hand, the learned counsels appearing for the respondents have interalia submitted that the petitioner has not challenged the transfer order and hence he is not entitled to argue the said O.A. No.677 of 2004 on merits. Therefore, the tribunal was justified in passing the order impugned herein.

9. We heard the parties, we are of the opinion that even though the order of the Tribunal was implemented pursuant to the interim orders passed in the said O.A. that does not mean that the application is not required to be heard finally. It is a settled law that every interim order is subject to final orders that are to be passed ultimately in the proceedings. We are also of the further view that though the transfer order is not challenged by the petitioner, the petitioner is still entitled to raise various contentions before the Tribunal such as that the application is not maintainable or there are good sufficient reasons for non-compliance with the said order and the Tribunal ought not to have interfered in the said

O.A.No.677 of 2004. We are of the view that the matter requires to be heard by the Tribunal finally. It is a different matter that even after hearing the matter finally the tribunal may come to the same conclusion.

10. In the light of the aforesaid circumstances, we are of the view that the order passed by the Tribunal and impugned herein requires to be interfered with. We accordingly quash and set aside the said order impugned herein and remand the matter back to the Tribunal for fresh hearing. The tribunal shall hear the O.A. no.677 of 2004 finally and dispose of the said application as far as possible on or before 30th November 2004. Petition is disposed of accordingly. However, there shall be no order as to costs.

Parties to act on a copy of this order duly authenticated by the Court Stenographer.